

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, NOVEMBER 18, 2020

3000 RIVERS OFFICE
VIRGINIA CONTROL CENTER
2020 NOV 18 P 12: 59

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JOINT PETITION OF

CCA INDUSTRIES, INC.,
KESWICK ESTATE UTILITIES, INC.,
and
HISTORIC HOTELS OF ALBEMARLE, LLC

CASE NO. PUR-2020-00250

For approval of an acquisition of control
of a public utility pursuant to the
Utility Transfers Act, Va. Code § 56-88 *et seq.*

ORDER FOR NOTICE AND COMMENT

On October 23, 2020, CCA Industries, Inc. ("CCA Industries"), Keswick Estate Utilities, Inc. ("Keswick Utilities"), and the Historic Hotels of Albemarle, LLC ("HHA") (collectively, "Petitioners") filed with the State Corporation Commission ("Commission") a joint petition ("Petition"), pursuant to the Utility Transfers Act, Chapter 5 of Title 56 of the Code of Virginia ("Code"),¹ requesting approval of the transfer of control of Keswick Utilities from CCA Industries to HHA ("Proposed Transfer").² Should the Commission approve the Proposed Transfer, HHA will purchase all outstanding shares in Keswick Utilities from CCA Industries pursuant to the terms of a Stock Purchase Agreement and associated agreements.³

The Petition states that Keswick Utilities provides both water production and distribution, and wastewater treatment services to HHA; Keswick Club, LLC; and Keswick Real Estate, LLC ("Keswick Properties"), as well as the Keswick Estates Community.⁴ The Petition further states

¹ Code § 56-88 *et seq.*

² Petitioners also filed a Motion for Protective Ruling with their Petition.

³ Petition at 1.

⁴ *Id.* at 2. See *Application of Keswick Estates Utilities, LLC, and Keswick Utilities, Inc., For certificates of public convenience and necessity to provide water and sewerage services pursuant to the Utility Facilities Act and for*

that both the water and wastewater systems are operated by Environmental Systems Service, Ltd. ("Environmental Systems"), a professional environmental firm located in Culpepper, Virginia.⁵

Petitioners assert that approval of the Proposed Transfer will neither jeopardize nor impact the provision of adequate service to the public at just and reasonable rates.⁶ Petitioners state that day-to-day operation of the utility will remain unchanged, as Environmental Systems will continue to operate the water and wastewater systems in the same manner that it has previously.⁷ Petitioners further state that administrative management and oversight of Keswick Utilities will continue to be managed in coordination with the other Keswick Properties by a common management team.⁸

Finally, Petitioners propose no changes to current rates. They assert there is no anticipated change for customers of Keswick Utilities as a result of the Proposed Transfer, with Keswick Utilities continuing to provide service under its current tariffs.⁹

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that this matter should be docketed; Petitioners should provide public notice of their Petition; interested persons should have an opportunity to file comments on the Petition and request a hearing; and the Commission's Staff ("Staff") should be directed to investigate the Petition and file a report containing Staff's findings and recommendations ("Staff Report").

approval of a transfer of utility assets pursuant to the Utility Transfers Act, Case No. PUE-2013-00056, 2014 S.C.C. Ann. Rept. 276, Final Order Granting Approval (Oct. 14, 2014).

⁵ Petition at 2.

⁶ *Id.* at 4.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*; Petition (Exhibit B) at 1.

We also find that a Hearing Examiner should be assigned to rule on any discovery matters that arise during the course of this proceeding, including ruling on the Petitioners' Motion for Protective Ruling.

The Commission further takes judicial notice of the ongoing public health emergency related to the spread of the coronavirus, or COVID-19, and the declarations of emergency issued at both the state and federal levels.¹⁰ The Commission has taken certain actions, and may take additional actions going forward, that could impact the procedures in this proceeding.¹¹ Consistent with these actions, in regard to the terms of the procedural framework established below, the Commission will, among other things, direct the electronic filing of testimony and pleadings, unless they contain confidential information, and require electronic service on parties to this proceeding.

Finally, under Code § 56-88.1, the Commission must act on the Petition within 60 days of its filing, or the Petition will be deemed approved by operation of law. The Commission may,

¹⁰ See, e.g., Executive Order No. 51, Declaration of a State of Emergency Due to Novel Coronavirus, COVID-19, issued March 12, 2020, by Governor Ralph S. Northam. See also Executive Order No. 53, Temporary Restrictions on Restaurants, Recreational, Entertainment, Gatherings, Non-Essential Retail Businesses, and Closure of K-12 Schools Due to Novel Coronavirus (COVID-19), issued March 23, 2020, by Governor Ralph S. Northam, and Executive Order No. 55, Temporary Stay at Home Order Due to Novel Coronavirus (COVID-19), issued March 30, 2020, by Governor Ralph S. Northam. These and subsequent Executive Orders related to COVID-19 may be found at: <https://www.governor.virginia.gov/executive-actions/>.

¹¹ See, e.g., *Commonwealth of Virginia, ex rel., State Corporation Commission, Ex Parte: Electronic Service of Commission Orders*, Case No. CLK-2020-00004, Doc. Con. Cen. No. 200330035, Order Concerning Electronic Service of Commission Orders (Mar. 19, 2020); *Commonwealth of Virginia, ex rel., State Corporation Commission, Ex Parte: Revised Operating Procedures During COVID-19 Emergency*, Case No. CLK-2020-00005, Doc. Con. Cen. No. 200330042, Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency (Mar. 19, 2020) ("Revised Operating Procedures Order"); *Commonwealth of Virginia, ex rel., State Corporation Commission, Ex Parte: Revised Operating Procedures During COVID-19 Emergency*, Case Nos. CLK-2020-00004 and CLK-2020-00005, Doc. Con. Cen. No. 200520101, Order Regarding the State Corporation Commission's Revised Operating Procedures During COVID-19 Emergency (May 11, 2020); *Commonwealth of Virginia, ex rel., State Corporation Commission, Ex Parte: Electronic service among parties during COVID-19 emergency*, Case No. CLK-2020-00007, Doc. Con. Cen. No. 200410009, Order Requiring Electronic Service (Apr. 1, 2020).

however, extend this period for up to an additional 120 days.¹² Because the issues involved in the Petition will require additional time for review, we find that the review period should be extended through April 21, 2021.

Accordingly, IT IS ORDERED THAT:

(1) This case is docketed and assigned Case No. PUR-2020-00250.

(2) Pursuant to Code § 56-88.1, the period of time for reviewing the issues presented by the Petition hereby is extended through April 21, 2021.

(3) All pleadings in this matter shall be submitted electronically to the extent authorized by Rule 5 VAC 5-20-150, *Copies and format*, of the Commission's Rules of Practice and Procedure ("Rules of Practice").¹³ Confidential and Extraordinarily Sensitive information shall not be submitted electronically and should comply with 5 VAC 5-20-170, *Confidential information*, of the Rules of Practice. For the duration of the COVID-19 emergency, any person seeking to hand deliver and physically file or submit any pleading or other document shall contact the Clerk's Office Document Control Center at (804) 371-9838 to arrange the delivery.¹⁴

(4) Pursuant to 5 VAC 5-20-140, *Filing and service*, of the Commission's Rules of Practice, the Commission directs that service on parties and the Staff in this matter shall be accomplished by electronic means. Concerning Confidential or Extraordinarily Sensitive Information, parties and the Staff are instructed to work together to agree upon the manner in which documents containing such information shall be served upon one another, to the extent

¹² See Code § 56-88.1.

¹³ 5 VAC 5-20-10 *et seq.*

¹⁴ As noted in the Commission's Revised Operating Procedures Order, submissions to the Commission's Clerk's Office via U.S. mail or commercial mail equivalents may not be processed for an indefinite period of time due to the COVID-19 emergency.

practicable, in an electronically protected manner, even if such information is unable to be filed in the Office of the Clerk, so that no party or the Staff is impeded from preparing its case.

(5) As provided by § 12.1-31 of the Code and 5 VAC 5-20-120, *Procedure before hearing examiners*, of the Commission's Rules of Practice, a Hearing Examiner is appointed to rule on any discovery matter that may arise during the course of this proceeding, including ruling on the Petitioners' Motion for Protective Ruling.

(6) An electronic copy of the public version of the Petition and the Commission's Order for Notice and Comment may be obtained by submitting a written request to counsel for the Petitioners, Timothy E. Biller, Esquire, Hunton Andrews Kurth LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219, or tbiller@huntonak.com. Interested persons also may download unofficial copies from the Commission's website: scc.virginia.gov/pages/Case-Information.

(7) On or before December 18, 2020, Petitioners shall mail by first class mail, postage prepaid (bill inserts are acceptable) the following notice to all customers in the service territory of Keswick Utilities:

NOTICE TO THE PUBLIC OF
THE JOINT PETITION OF CCA INDUSTRIES, INC.,
KESWICK ESTATE UTILITIES, INC., AND HISTORIC
HOTELS OF ALBEMARLE, LLC,
FOR APPROVAL OF AN ACQUISITION OF
CONTROL OF A PUBLIC UTILITY
CASE NO. PUR-2020-00250

On October 23, 2020, CCA Industries, Inc. ("CCA Industries"), Keswick Estate Utilities, Inc. ("Keswick Utilities"), and the Historic Hotels of Albemarle, LLC ("HHA") (collectively, "Petitioners") filed with the State Corporation Commission ("Commission") a joint petition ("Petition"), pursuant to the Utility Transfers Act, Chapter 5 of Title 56 of the Code of Virginia, requesting approval of the transfer of control of Keswick Utilities

from CCA Industries to HHA ("Proposed Transfer"). Should the Commission approve the Proposed Transfer, HHA will purchase all outstanding shares in Keswick Utilities from CCA Industries pursuant to the terms of a Stock Purchase Agreement and associated agreements.

The Petition states that Keswick Utilities provides both water production and distribution, and wastewater treatment services to HHA; Keswick Club, LLC; and Keswick Real Estate, LLC ("Keswick Properties"), as well as the Keswick Estates Community. The Petition further states that both the water and wastewater systems are operated by Environmental Systems Service, Ltd. ("Environmental Systems"), a professional environmental firm located in Culpepper, Virginia.

Petitioners assert that approval of the Proposed Transfer will neither jeopardize nor impact the provision of adequate service to the public at just and reasonable rates. Petitioners state that day-to-day operation of the utility will remain unchanged, as Environmental Systems will continue to operate the water and wastewater systems in the same manner that it has previously. Petitioners further state that administrative management and oversight of Keswick Utilities will continue to be managed in coordination with the other Keswick Properties by a common management team.

Finally, Petitioners propose no changes to current rates. They assert there is no anticipated change for customers of Keswick Utilities as a result of the Proposed Transfer, with Keswick Utilities continuing to provide service under its current tariffs.

The Commission entered an Order for Notice and Comment that, among other things, directed the Petitioners to provide notice of their Petition and provided interested persons an opportunity to comment or request a hearing on the Petition.

The Commission has taken judicial notice of the ongoing public health emergency related to the spread of the coronavirus, or COVID-19, and the declarations of emergency issued at both the state and federal levels. In accordance therewith, all pleadings, briefs, or other documents required to be served in this matter shall be submitted electronically to the extent authorized by 5 VAC 5-20-150, *Copies and format*, of the Commission's Rules of Practice and Procedure ("Rules of Practice"). Confidential and Extraordinarily Sensitive information shall not be submitted

electronically and should comply with 5 VAC 5-20-170, *Confidential information*, of the Rules of Practice. For the duration of the COVID-19 emergency, any person seeking to hand deliver and physically file or submit any pleading or other document shall contact the Clerk's Office Document Control Center at (804) 371-9838 to arrange the delivery.

Pursuant to 5 VAC 5-20-140, *Filing and service*, of the Commission's Rules of Practice, the Commission has directed that service on parties and Staff in this matter shall be accomplished by electronic means. Please refer to the Commission's Order for Notice and Comment for further instructions concerning Confidential or Extraordinarily Sensitive Information.

An electronic copy of the public version of the Petition may be obtained by submitting a written request to counsel for the Petitioners, Timothy E. Biller, Esquire, Hunton Andrews Kurth LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219, or tbiller@huntonak.com. Interested persons also may download unofficial copies from the Commission's website: scc.virginia.gov/pages/Case-Information.

On or before January 15, 2021 any interested person may file comments on the Petition by following the instructions found on the Commission's website: scc.virginia.gov/casecomments/Submit-Public-Comments. All comments shall refer to Case No. PUR-2020-00250.

On or before January 15, 2021, any person or entity wishing to participate as a respondent in this proceeding may do so by filing, with the Clerk of the Commission at: scc.virginia.gov/clk/efiling/, a notice of participation. Such notice of participation shall include the email addresses of such parties or their counsel. The respondent simultaneously shall serve a copy of the notice of participation on counsel to the Petitioners. Pursuant to Rule 5 VAC 5-20-80 B, *Participation as a respondent*, of the Commission's Rules of Practice, any notice of participation shall set forth: (i) a precise statement of the interest of the respondent; (ii) a statement of the specific action sought to the extent then known; and (iii) the factual and legal basis for the action. Any organization, corporation, or government body participating as a respondent must be represented by counsel as required by Rule 5 VAC 5-20-30, *Counsel*, of the Rules of Practice. All filings shall refer to Case No. PUR-2020-00250.

On or before January 15, 2021, any interested person or entity may file, with the Clerk of the Commission at: scc.virginia.gov/clk/efiling/, a request that the Commission convene a hearing on the Petition. Requests for a hearing shall refer to Case No. PUR-2020-00250 and shall include: (i) a precise statement of the filing party's interest in the proceeding; (ii) a statement of the specific action sought to the extent then known; (iii) a statement of the legal basis for such action; and (iv) a precise statement why a hearing should be conducted in this matter. All such filings shall refer to Case No. PUR-2020-00250.

A copy of any notices of participation and requests for hearing simultaneously shall be sent to counsel for the Petitioners electronically at the email address set forth above.

Any documents filed in paper form with the Office of the Clerk of the Commission in this docket may use both sides of the paper. In all other respects, except as modified by the Commission's Order for Notice and Comment, all filings shall comply fully with the requirements of 5 VAC 5-20-150, *Copies and format*, of the Commission's Rules of Practice.

The public version of the Petition, the Commission's Rules of Practice, and the Commission's Order for Notice and Comment may be viewed at the Commission's website: scc.virginia.gov/pages/Case-Information.

CCA INDUSTRIES, INC., KESWICK ESTATE UTILITIES, INC.,
AND HISTORIC HOTELS OF ALBEMARLE, LLC

(8) On or before December 18, 2020, Petitioners shall serve a copy of this Order for Notice and Comment on the following officials, to the extent the position exists, in each county, city, and town in which Keswick Utilities provides service in the Commonwealth of Virginia: the chairman of the board of supervisors of each county; the mayor or manager (or equivalent official) of every city and town; and the county, city, or town attorney. Service shall be made electronically where possible; if electronic service is not possible, service shall be made by either personal delivery or first class mail to the customary place of business or residence of the person served.

(9) On or before January 8, 2021, Petitioners shall file proof of the service required by Ordering Paragraph (7) and (8) above, including the name, title, address and electronic mail address (if applicable) of each official served, with the Clerk of the Commission.

(10) On or before January 15, 2021, any interested person or entity may file comments on the Petition by following the instructions on the Commission's website: scc.virginia.gov/casecomments/Submit-Public-Comments. All comments shall refer to Case No. PUR-2020-00250.

(11) On or before January 15, 2021, any interested person may participate as a respondent in this proceeding by filing, with the Clerk of the Commission at: scc.virginia.gov/clk/efiling/, a notice of participation in accordance with the Commission's Rules of Practice. Such notice of participation shall include the email addresses of such parties or their counsel. Pursuant to 5 VAC 5-20-80 B, *Participation as a respondent*, of the Rules of Practice, any notice of participation shall set forth: (i) a precise statement of the interest of the respondent; (ii) a statement of the specific action sought to the extent then known; and (iii) the factual and legal basis for the action. Any organization, corporation, or government body participating as a respondent must be represented by counsel as required by 5 VAC 5-20-30, *Counsel*, of the Rules of Practice. All filings shall refer to Case No. PUR-2020-00250.

(12) On or before January 15, 2021, any interested person or entity may file, with the Clerk of the Commission at: scc.virginia.gov/clk/efiling/, a request that the Commission convene a hearing on the Petition. Requests for hearing must include: (i) a precise statement of the filing party's interest in the proceeding; (ii) a statement of the specific action sought to the extent then known; (iii) a statement of the legal basis for such action; and (iv) a precise statement

why a hearing should be conducted in this matter. All such filings shall refer to Case No. PUR-2020-00250.

(13) A copy of any requests for hearing and notices of participation simultaneously shall be sent to counsel for the Petitioners, Timothy E. Biller, Esquire, Hunton Andrews Kurth LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219, or tbiller@huntonak.com.

(14) The Staff shall investigate the Petition. On or before February 12, 2021, the Staff shall file with the Clerk of the Commission a Staff Report containing its findings and recommendations and promptly shall serve a copy on counsel to the Petitioners and all respondents.

(15) On or before February 26, 2021, Petitioners may file with the Clerk of the Commission any response in rebuttal to the Staff Report, requests for hearing, and any comments filed by interested persons in this proceeding.

(16) All documents filed with the Office of the Clerk of the Commission in this docket may use both sides of the paper. In all other respects, all filings shall comply fully with the requirements of 5 VAC 5-20-150, *Copies and format*, of the Commission's Rules of Practice.

(17) Petitioners shall respond to written interrogatories or requests for the production of documents within five (5) calendar days after the receipt of the same. In addition to the service requirements of 5 VAC 5-20-260, *Interrogatories or requests for production of documents and things*, of the Rules of Practice, on the day that copies are filed with the Clerk of the Commission, a copy of the interrogatory or request for production shall be served electronically on the party to whom the interrogatory or request for production is directed or the assigned Staff

attorney, if the interrogatory or request for production is directed to the Staff.¹⁵ Except as so modified, discovery shall be in accordance with Part IV of the Commission's Rules of Practice.

(18) This matter is continued.

A COPY hereof shall be sent electronically by the Clerk of the Commission to:

Timothy E. Biller, Esquire, and A. Christopher Alderman, Esquire, Hunton Andrews Kurth LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219, tbiller@huntonak.com, calderman@huntonak.com; Malia O'Connell Flatt, CCA Industries, Inc., 800 East Canal Street, Suite 1900, Richmond, Virginia 23219, mflatt@riverg.com; Christopher Lacaria, Cravath, Swaine, and Moore LLP, 825 Eighth Avenue, New York, New York 10019, clacaria@cravath.com; and C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of the Attorney General, 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219-3424, mbrowder@oag.state.va.us.

¹⁵ The assigned Staff attorney is identified on the Commission's website, scc.virginia.gov/pages/Case-Information, by clicking "Docket Search," then clicking "Search by Case Information," and entering the case number, PUR-2020-00250, in the appropriate box.